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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,582	09/20/2001	Thierry Scheye	CHA216	7942

7590 12/13/2004
Horst M Kasper
13 Forest Drive
Warren, NJ 07059

EXAMINER

HAN, MARK K

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 12/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/936,582

Applicant(s)

SCHEYE, THIERRY

Examiner

Mark K Han

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 23-26 is/are allowed.
- 6) ☒ Claim(s) 1,5-8,12,13,15,19,20 and 22 is/are rejected.
- 7) ☒ Claim(s) 2-4,9-11,14,16-18 and 21 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the nesting organ of claim 3 (lines 5-6), claim 10 (line 5) and claim 21 (lines 6-7).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8, 12, 13, 20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,344,435 to Aubin.

Aubin discloses a tube 14 (and including any portion defined between collars 16 and 18) having a first part 18 (tubular portion) and a second part 14, skin collar 18, intravisceral collar 16 and screw threading, valve 38 and shutter 44. See Figures 1-5. The first and second parts of the tube are axially mobile, can change position and are not spontaneously reversible. Further, in reference to claim 20, it is considered that the intravisceral collar is capable of being elastically deformed and therefore is given little patentable weight. Additionally, it is considered that the first and second parts the transparietal tube of the Aubin invention are connected through a screw connection and tapping since “tapping” the connecting portion of 18 can be considered as such.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 5-7, 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aubin.

Aubin discloses the claimed invention as shown above. Aubin, however, does not disclose expressly a bayonet fitting. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to substitute a bayonet fitting for a screw fitting because Applicant has not disclosed that a bayonet fitting provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the screw fitting of Aubin because a screw fitting and bayonet fitting are both well known and used interchangeably in the art for mechanical connectors. Therefore, it would have been an obvious matter of design choice to modify Aubin to obtain the invention as specified in claims 1, 5-7, 15 and 19.

Allowable Subject Matter

4. Claims 2-4, 9-11, 14, 16-18 and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
5. Claims 23-26 are allowed.
6. The following is an examiner's statement of reasons for allowance: The subject matter of the independent claims could either not be found or was not suggested in the prior art of record. The subject matter not found was the pusher having a non circular section to traverse the axial opening of a complementary shape in the second part of the transparietal tube to render the second part of the tube immobile in a rotational direction in combination with the other elements (or steps) in the claims.

Response to Arguments

7. Applicant's arguments filed 23 August 2004 have been fully considered but they are not persuasive. Applicants assert that Aubin discloses a tubular portion 14 that is not adjustable in length. However, Aubin clearly suggests a tubular structure that is adjustable in length where the tube's length is determined by the relative position of the skin collar and intravisceral collar. The Examiner has presented a new ground of rejection on claims 1 and 5-7 because of Applicant's statement regarding "means of immobilisation" on p. 24, lines 1-4 of Applicant's remarks.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark K Han whose telephone number is 571-272-4958. The examiner can normally be reached on Monday to Friday, 9 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3763

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Han
Patent Examiner
Art Unit 3763

mkh
December 8, 2004



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